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Supreme Court, U.S.
FILED
SEP 19 1997
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

No. 97-65

ROBERT H. YOUNG, ET AL., PETITIONERS

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RESPONSE OF THE FEDERAL RESPONDENT TO PETITIONERS' MOTION TO STRIKE RESPONDENT'S BRIEF IN OPPOSITION

The response of the Federal Deposit Insurance Corporation, as receiver, to the petition in this case was due for filing, on one extension, on September 8, 1997. On that date, members of the Solicitor General's staff delivered an appropriate number of copies of respondent's brief to the Clerk of this Court. At the same time, the staff served three copies of the brief on petitioner's counsel of record by placing the same in an envelope, addressed to counsel at the address reflected on the cover of the petition (and on the Court's docketing records), and delivering the same to appropriate personnel of the Department of Justice for deposit in the United States mail, first class postage prepaid. The fact of

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service is reflected in the Certificate of Service (Exhibit A, infra) filed with the Clerk (and served on counsel) together with the brief, in accordance with Rules 25.7 and 29.5 of the Rules of this Court.

In footnote 2 on page 6 of our brief, we indicated that we would, as a courtesy, provide to petitioners a copy of the government's brief in opposition in No. 96-106, Hess v. FDIC, to which we refer in respondent's brief in opposition in this case. The indicated copy of that brief was, however, inadvertently omitted from the package containing the service copy of respondent's brief. When that omission was noted on September 10, 1997, members of the staff promptly dispatched a copy of the brief in Hess to petitioner's counsel, together with additional copies of respondent's brief in this case. Because of the inadvertent delay, and again as a courtesy, the staff transmitted those additional copies to petitioner's counsel by overnight courier.

It appears from petitioner's motion (at 2) that petitioner's counsel received both the mailed service copies of respondent's brief, and the additional briefs dispatched by private courier, on September 11, 1997. Because briefs filed and served on September 8 would normally have been deposited in the mail toward the end of that day, delivery on September 11 would be consistent with ordinary first class mail service from Washington, D.C., to the offices of petitioner's counsel in Columbia, South Carolina. We note that, to the best of our knowledge, petitioner's counsel did

not at any time contact respondent's counsel to request earlier delivery of a copy of respondent's brief.

Under the circumstances, petitioners' present motion is without merit.

Respectfully submitted.

SETH P. WAXMAN
Acting Solicitor General

SEPTEMBER 1997

EXHIBIT A

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

YOUNG, ROBERT H., ET AL. Petitioners	)	
vs.	)	No. 97-0065
FDIC, ET AL.	)	

CERTIFICATE OF SERVICE

It is hereby certified that all parties required to be served have been served copies of the **BRIEF FOR THE FEDERAL DEPOSIT INSURANCE CORPORATION IN OPPOSITION** by first class mail, postage prepaid, on this 8th day of September 1997.

SETH P. WAXMAN
Acting Solicitor General

September 8, 1997

See Attached List

September 8, 1997

Attachment List for Case No. 97-0065

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